

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-230

CHRISTOPHER VAUGHN,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered OCTOBER 8, 2008

APPEAL FROM THE JACKSON
COUNTY CIRCUIT COURT,
[NO. CR-2006-129]

HONORABLE HAROLD S. ERWIN,
JUDGE,

AFFIRMED

KAREN R. BAKER, Judge

A Jackson County jury convicted appellant Christopher Vaughn of kidnapping and rape and sentenced him to concurrent ten-year sentences in the Arkansas Department of Correction. On appeal he alleges that the trial court erred in failing to grant his motion for directed verdict when the State failed to prove that appellant committed the act of rape or kidnapping. Because appellant's argument to the trial court focused upon the credibility of the evidence presented to the jury, appellant failed to properly preserve the argument below; accordingly, we affirm.

A directed-verdict motion is a challenge to the sufficiency of the evidence and requires the movant to apprise the trial court of the specific basis on which the motion is made. *Tryon v. State*, 371 Ark. 25, ___ S.W.3d ___ (2007). When a motion for a directed verdict does not identify particular or specific elements of proof that are missing from the State's case, the

motion fails to properly apprise the trial court of the asserted error. *See id.* A directed verdict motion must be a specific motion to apprise the trial court of the particular point raised, since when specific grounds are stated and the absent proof is pinpointed, the trial court can either grant the motion, or, if justice requires, allow the state to reopen its case and supply the missing proof. *Tester v. State*, 342 Ark. 549, 30 S.W.3d 99 (2000). The movant is then bound by the scope and nature of the objections and arguments presented at trial. *Id.* As our supreme court has explained, the preservation of a challenge to the sufficiency of the evidence is dependent on the defendant making the specific challenge to the trial court that he seeks to make on appeal. *E.g.*, *Conner v. State*, 334 Ark. 457, 982 S.W.2d 655 (1998).

In the case before us, appellant failed to bring to the court's attention specific deficiencies in the State's evidence to pinpoint the absent proof required to establish the elements of kidnapping and rape. Instead, appellant's directed verdict motion challenged only the credibility of the testimony, especially that of the victim. Appellant's choice of words in making his motion emphasizes that credibility was the focus of his argument. In making his motion, counsel for appellant stated that he did not believe that her testimony "has enough weight" to pass the prima facie case.

Appellant's directed verdict motion actually has little to do with the sufficiency of the evidence. As appellant indicated in making his motion, the substance of his argument has more to do with the weight of the evidence, rather than the sufficiency of it. *See Engram v. State*, 341 Ark. 196, 15 S.W.3d 678 (2000). Weighing the evidence is within the jury's province to resolve credibility disputes. *See id.* Here, appellant's challenge to the sufficiency

of the evidence was not properly raised below because his directed verdict motion was based only upon credibility determinations and failed to specify the manner in which the evidence against him was insufficient to support a conviction. *Beavers v. State*, 345 Ark. 291, 46 S.W.3d 532 (2001). Consequently, the question of evidentiary sufficiency is not properly before us, and we do not address it.

Accordingly, we affirm.

PITTMAN, C.J., and HUNT, J., agree.